



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

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URGENT LEGAL MATTER -- PROMPT REPLY NECESSARY
CERTIFIED MAIL: RETURN RECEIPT REQUESTED
Return Receipt No. P 383 399 096

Peter Simhauser
Skadden, Arps, Slate, Meagher & Flom
for Kelly-Pickering Chemicals
Four Embarcadero Center
Suite 3750
San Francisco, CA 94111

Re: SUPPLEMENTAL INFORMATION REQUEST AND OFFER OF DE
MINIMIS SETTLEMENT
Lorentz Barrel and Drum Superfund Site
1515 South 10th Street, San Jose, California

Dear Mr. Simhauser:

On June 13, 1989, the United States Environmental Protection Agency ("EPA") issued an Information Request to Kelly-Pickering Chemicals pursuant to Section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9604(e), relating to the Lorentz Barrel and Drum Superfund Site ("Site"). You responded to that Information Request on behalf of Textron, Inc. by a letter dated January 15, 1990. Thank you for your response.

Since that time EPA and the California Department of Toxic Substances Control ("DTSC") have taken actions to study and clean up this Site and to identify potentially responsible parties and involve them in the cleanup. This letter and its attachments further describe these actions.

After reviewing your response, EPA has additional questions about the contents of the barrels, drums, or other containers that Kelly-Pickering Chemicals sent to the Lorentz Site. These questions are set forth in Attachment A.

This letter offers you the option of either responding to the questions in Attachment A (Supplemental Information Request) or complying with the settlement alternative set forth in the "Settlement Option" section of this letter. Your client must answer the Supplemental Information Request in Attachment A within 60 calendar days of the date of this letter unless your client fully complies with the settlement alternative.

Settlement Option

Based on EPA's experience in requesting information from other parties at Superfund sites, we know that some parties would prefer to reach an immediate settlement with EPA and DTSC rather than expend the resources needed to respond to EPA's Information Request and to complete all subsequent dealings with EPA and DTSC. A settlement with EPA and DTSC would involve paying money to EPA and DTSC to cover the cost of cleaning up the Site in exchange for an agreement from EPA and DTSC not to sue for the cleanup costs.

Under Superfund, a special type of settlement (called a "de minimis" settlement) may be made available for parties that contributed only a small amount of waste to a site. Using business receipts found on-site, EPA compiled a list (the "Waste-in List") of Lorentz Barrel and Drum Company's customers that sent barrels to the Site that may have contained a hazardous substance. The Waste-in List identifies the name of the individual or company and the number and percentage of barrels contributed to the Site by that party as best as could be determined from the information available to EPA. The list is sorted in descending order according to the total number of barrels. It has been revised to reflect information received since July 29, 1994 and is available at the information repositories listed in Attachment B.

Based on the information currently available, EPA believes that your client may qualify for a de minimis settlement with respect to the Lorentz Site. At this time, EPA and DTSC are only offering this settlement option to parties who contributed not more than 1.00% and not less than approximately 0.012% of the total number of barrels on the July 29, 1994 Waste-in List (no more than 25,784 barrels and no less than 296 barrels).

If your client would prefer to enter into a settlement with EPA and DTSC without incurring the expense of answering the attached Supplemental Information Request, please follow the instructions in Attachment C. You may, of course, inquire about the settlement and later choose to respond to the Supplemental Information Request if the settlement terms are not acceptable to your client, provided you or your client responds to the Supplemental Information Request within sixty (60) calendar days of the date of this letter.

In an effort to streamline the settlement process and minimize costs for all parties, we have written a settlement agreement to resolve your client's liability at the Site. This agreement is modeled on previous settlements that have been negotiated for similar parties at other Superfund sites. The agreement is explained further in Attachment C and the agreement itself is Attachment D. If your client settles with EPA and

DTSC, they will be settling for the number of barrels listed in Appendix 1 to the settlement document. If you have questions about this amount, please call one of the EPA contacts listed on page 5 within 30 days of the date of this letter.

EPA and DTSC have concluded a settlement with 88 of the other de minimis parties at this site. The settlement agreement in Attachment D provides equivalent settlement terms as those provided to the 88 parties who have recently entered into a de minimis settlement.

Description of Legal Authority

The federal "Superfund" law (the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S. Code § 9601, et seq. commonly referred to as "CERCLA" or "Superfund") gives EPA the authority to clean up hazardous substances released into the environment at abandoned or uncontrolled hazardous waste sites. Pursuant to the California Hazardous Substances Account Act, California Health and Safety Code, Section 25300 et seq. and CERCLA Section 107, DTSC has similar authorities to those of EPA to require or perform cleanups and to engage in cost recovery.

EPA and DTSC are spending public funds to investigate and respond to contamination of the soil and groundwater at the Lorentz Site. EPA and DTSC's actions are summarized in Attachment B. We believe that **residues** of hazardous substances in nearly empty barrels which the Lorentz Barrel and Drum Company cleaned and resold caused most of the contamination at the Site. As a result of poor waste management practices, the soil and groundwater at the Site became contaminated with the residual contents of the recycled barrels and drums, as well as with the chemicals used in the recycling operation.

In 1993 we discovered additional records at the Lorentz Site pertaining to barrels, drums, or other containers received by the Lorentz Barrel and Drum Company, and have revised the waste-in database to reflect this new information. Enclosed with this letter is a revised Document Report listing all documents we have used to attribute drums to Kelly-Pickering and a copy of the receipts, invoices, or bills of lading from shipments that we believe Kelly-Pickering made to the Lorentz Barrel and Drum Company (Attachment E). The information in the Document Report should be helpful in determining the basis for our allocation of barrels to Kelly-Pickering.

Information Request

Under the Superfund law, EPA may require disclosure of information relating to materials sent to a site. The Superfund law states that EPA may require any person who has or may have information relevant to a Superfund site to furnish such

information or related documents to EPA. Specifically, CERCLA Section 104(e)(2) provides that EPA may seek information regarding:

- (A) The identification, nature, and quantity of materials which have been or are generated, treated, stored, or disposed of at a vessel or facility or transported to a vessel or facility.
- (B) The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at or from a vessel or facility.
- (C) Information relating to the ability of a person to pay for or to perform a cleanup.

Thus, relevant information may concern materials generated by your client's business and materials transported to a Superfund site.

Unless your client complies with the settlement alternative set forth in the "Settlement Option" section of this letter, your client must answer this Supplemental Information Request within 60 days of the date of this letter. Your client must provide all information responsive to this request, including all information and documents developed or obtained by your client, the company, and its employees, agents, and consultants, as well as any of their agents, consultants or employees.

Compliance with this Supplemental Information Request is mandatory if your client does not comply with the settlement alternative. Failure to respond fully and truthfully within the time limits specified in this letter may result in enforcement action by EPA under Section 104(e)(5) of Superfund. This provision of the Superfund law authorizes EPA to seek penalties of up to \$25,000 for each day of noncompliance with an information request. Providing false, fictitious or fraudulent statements or representations to EPA may subject your client to criminal penalties under federal law (18 U.S.C. § 1001).

This Information Request is not subject to the approval requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501.

How to Obtain Additional Information

If you have questions about the history of the Site, the nature of the environmental conditions at the Site, or the status of cleanup activities, please visit one of the information repositories listed in Attachment B. If you need further information about the Supplemental Information Request or the settlement option, please direct those questions to:

Mary Andrews or Bob Roberts
U.S. Environmental Protection Agency
Office of Site Remediation Enforcement (2272)
401 M Street, S.W.
Washington, DC 20460

or leave a message on the EPA Superfund de Minimis Hotline voice mail at 1-800-890-4219 and EPA or DTSC will promptly return your call.

Thank you for your attention to this matter.

Sincerely,



for Nathan W. Lau, Acting Chief
Remedial Action Branch
Hazardous Waste Management
Division
U.S. EPA



Barbara J. Cook, Chief
Site Mitigation Branch
California DTSC

cc: President, Kelly-Pickering Chemicals

Enclosures:

Supplemental Information Request (Attachment A)
Summary of EPA and DTSC Actions at the Site (Attachment B)
Summary of the Settlement Offer (Attachment C)
Settlement Document (Attachment D)
Document Report and Receipts (Attachment E)

Attachment A
Supplemental Information Request
to Kelly-Pickering Chemicals

Responding to the Information Request

Your response to this request for information must be made in writing, signed by you or a duly authorized official of your company and submitted to EPA within sixty (60) calendar days of receipt of this Information Request. Your response must be directed to:

Darrin Swartz-Larson
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street (H-6-2)
San Francisco, California 94105

Disclosure of confidential information

As explained more fully in the accompanying letter, EPA is requesting this information pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), Section 104(e). EPA has the authority to use the information requested in this letter in an administrative, civil, or criminal action. You may assert a business confidentiality claim covering all or part of the information requested in this letter, as provided at 40 Code of Federal Regulations ("C.F.R.") Section 2.203(b).

If you make a claim of confidentiality for any of the information you submit to EPA, you must substantiate that claim. For each document, your substantiation must separately address the following points enumerated in 40 C.F.R. Section 2.204(e):

1. the portions of the information alleged to be entitled to confidential treatment;
2. the period of time for which confidential treatment is desired (e.g., until a certain date, until the occurrence of a specific event, or permanently);
3. measures taken by you to guard against the undesired disclosure of the information to others;
4. the extent to which the information has been disclosed to others, and the precautions taken in connection therewith;
5. pertinent confidentiality determinations, if any, by EPA or other federal agencies, and a copy of any such determinations or reference to them, if available; and

6. whether you assert that disclosure of the information would be likely to result in substantial harmful effects on your business' competitive position, and if so, what those harmful effects would be, why they should be viewed as substantial, and an explanation of the causal relationship between disclosure and such harmful effects.

To make a confidentiality claim, please stamp or type "confidential" on all confidential responses and any related confidential documents. Confidential portions of otherwise non-confidential documents should be clearly identified. You should also indicate a date, if any, after which the information need no longer be treated as confidential. You must also include the information necessary to substantiate your claim (as described above). Please enclose all material identified as confidential in a separate envelope. For all information not clearly marked as confidential EPA will consider any confidentiality claim to be waived, and this information may be made publicly available without further notice.

All confidentiality claims are subject to EPA verification and must be made in accordance with 40 C.F.R. Section 2.08, which provides in part that you satisfactorily show that you have taken reasonable measures to protect the confidentiality of the information and that you intend to continue to do so, and that it is not and has not been obtainable by legitimate means without your consent.

Information covered by such a claim will be disclosed by EPA only to the extent permitted by CERCLA Section 104(e). This includes EPA's contemplated disclosure of the requested information to the following authorized representatives of EPA, for purposes of the Agency's response actions at the Lorentz Site:

Science Applications International Corp.
Contract # 68-W4-0021

URS Consultants, Inc.
Contract # 68-W9-0054

Labat-Anderson, Inc.
Contract # 68-W4-0028

Any comments on this contemplated disclosure must be submitted to Darrin Swartz-Larson of EPA at the 75 Hawthorne Street address within **sixty (60)** days of receipt of this Information Request. This notice is provided pursuant to 40 C.F.R. Section 2.310(h).

The information that EPA intends to disclose to its authorized representatives includes any response to this Information Request. This information may be made available to these authorized representatives of EPA for any of the following reasons: to assist with document handling, inventory, and indexing; to assist with document review and analysis for verification of completeness; and to provide expert technical review of the contents of the response. Pursuant to 40 C.F.R. Section 2.310(h), you may submit comments on EPA's disclosure of any confidential information contained in your response by EPA to its authorized representatives along with the response itself within the time period specified above.

Instructions

1. **A separate response must be made to each of the questions set forth in this Information Request.**
2. Please provide the answers to the questions on a separate piece or pieces of paper. Please indicate at the beginning of each answer the number of the question to which the answer corresponds. Please type or **print** clearly.
3. For each question, please identify all person(s) and all documents consulted in the preparation of the answer.
4. To the extent that you do not respond to any question, please explain why you are not responding to the question.
5. If for any reason you are withholding any documents that are responsive to this Information Request, identify the document(s) and state your basis for withholding the document(s).
6. For each question contained in this letter, if information responsive to this Information Request is not in your possession, custody, or control, please identify the person(s) from whom such information may be obtained.

Definitions

The following definitions shall apply to the following words as they appear in this Information Request.

1. The term "you" shall mean Kelly-Pickering Chemicals. The term "you" also includes any officers, managers, employees, contractors, trustees, successors, assigns, and agents of Kelly-Pickering Chemicals.
2. The term "person" shall include any individual, firm, unincorporated association, partnership, corporation, trust, or other entity.

3. The term "Site" shall mean the Lorentz Barrel and Drum Superfund Site located at 1515 South 10th Street in San Jose, California.

4. The term "hazardous substance" shall have the same definition as that contained in Section 101(14) of CERCLA, and includes any mixtures of such hazardous substances with any other substances, including mixtures of hazardous substances with petroleum products or other nonhazardous substances.

5. With respect to an individual, the term "identify" means to provide the person's name, present or last known business address and business telephone number, and affiliation (if any) with the individual and/or company to whom/which this request is addressed. If you do not know the person's business address and business telephone number, provide the person's home address and home telephone number, if known.

6. With respect to a corporation, partnership, or other business entity (including a sole proprietorship), the term "identify" means to provide its full name, address, and affiliation with the individual and/or company to whom/which this request is addressed.

7. The term "documents" includes any written, recorded, computer generated, or visually or aurally reproduced material of any kind in any medium in your possession, custody, or control or known by you to exist, including originals, all prior drafts, and all non-identical copies.

Questions

In your response to EPA's June 13, 1989 Information Request, you indicated that, with respect to the contents of drums sent by Kelly-Pickering Chemicals to the Site, "The facility may have sent empty barrels which formerly contained out-of-specification ("off spec") material to Lorentz... The off spec materials, residues of which may have been in empty drums sent to Lorentz, consisted of resins manufactured at the facility that failed to meet specifications. the off spec material was originally liquid; the residue may have solidified. The resins were urethane, copolymer and alkyd resins."

1. Provide the following information regarding "urethane, copolymer and alkyd resins" referred to in Textron's response to Question # 2:

A. describe the nature, including chemical composition and formulation, trade or product name, and, if applicable, provide the EPA hazardous waste classification number (as identified in 40 C.F.R. Part 261 Subpart D) of each substance;

- B. provide Material Safety Data Sheets ("MSDS") for any products identified in response to subpart A, above, and if any MSDS you provide lists a chemical mixture, provide the chemical composition and formulation of that mixture.
2. Identify all hazardous substances used, manufactured, produced, or generated at your facility (whether raw materials, intermediate product, final product, or materials used in maintenance of your facility, such as cleaning materials) that may have been placed in barrels or drums at any time during the period in which your barrels, drums, or other containers went to the Site. Include, if applicable, the EPA hazardous waste classification number(s) identified in 40 C.F.R. Part 261 D for each such substance.

EPA AND DTSC ACTIONS AT THE LORENTZ BARREL AND DRUM SUPERFUND SITE

Under the Superfund law (the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S. Code § 9601, et seq. commonly referred to as CERCLA or Superfund), EPA is responsible for (1) assessing contaminated sites, (2) determining the threats to human health and the environment posed by each site, and (3) cleaning up those sites in the order of the relative threats posed by each. This last step includes studying the alternatives for cleaning up a site and choosing the appropriate remedy based on conditions at that site. EPA publicly selects a remedy for the site in a Record of Decision.

The California Department of Toxic Substances Control ("DTSC") has similar responsibilities under the California Hazardous Substances Account Act, California Health and Safety Code, Section 25300 et seq.

Potentially responsible parties may be liable for all costs incurred by the government in responding to a release or threatened release at the site. These costs may include money spent for investigation, planning, response and enforcement.

In the early 1980s, EPA and DTSC determined that the presence of hazardous substances discovered at the Lorentz Barrel and Drum Superfund Site (the "Site") posed a threat to human health and the environment. There were contaminated soils, contaminated groundwater, and barrels containing residues of hazardous substances at the Site. In late 1987 and early 1988, EPA and DTSC (formerly part of the California Department of Health Services) removed barrels and the most highly contaminated soils from the Site. Most of the Site was then paved over with a temporary cap designed to protect humans from direct contact with contaminated soil and minimize contaminant leaching caused by infiltration of surface water.

Based on preliminary site assessment studies, EPA determined that contamination of the shallow groundwater aquifer at the Site presented an imminent hazard to human health and the environment because the shallow groundwater aquifer overlies the local municipal drinking water aquifer. Therefore, EPA addressed the shallow groundwater contamination as an interim measure (or "operable unit," as defined in Superfund regulations). After performing a site investigation using public funds, EPA determined that a groundwater extraction and treatment system would be necessary to clean up the shallow groundwater aquifer at the Site. This determination was set forth in a Record of Decision dated September 22, 1988.

During this time and later as records were discovered, EPA used business receipts found on-site to compile a list (the "Waste-in List") of Lorentz Barrel and Drum Company customers that sent barrels to the Site that may have contained a hazardous substance. The Waste-in List identifies the name of the individual, company, or other entity and the number

and percentage of barrels contributed to the Site by that party as best as could be determined from the information available to EPA. The list is sorted in descending order according to the total number of barrels, and contains nearly 3,000 entities that we believe sent barrels to the Site.

In 1989, EPA sent a General Notice of liability to some of the contributors at the Site. EPA negotiated a settlement agreement with a group of eleven of these parties in 1990. The signatories of the agreement have designed, constructed, and are currently operating the treatment system that will clean up the shallow groundwater aquifer. EPA entered into a second, separate settlement agreement in 1992 with a group of seven companies to address certain additional hazardous conditions at the Site. The agreement requires the companies to remove contaminated buildings, contaminated sumps, drums with residues of hazardous substances, debris, and asbestos wastes from the Site.

In addition, EPA conducted a Remedial Investigation and Feasibility Study to define the extent of additional contamination at the Site and to evaluate methods to address the additional problems. On August 26, 1993, EPA issued its Record of Decision setting forth the final cleanup for the Site. This remedy will include removal of some contaminated soils and all remaining debris, construction of an asphaltic concrete cap over the Site, and soil vapor extraction of a portion of the contaminated soil beneath the cap. This is the final remedy for all aspects of the Site not addressed by the shallow groundwater extraction and treatment system and the building and sump removal action.

On May 23, 1995, EPA entered into a separate administrative settlement agreement with 88 of the parties that qualified for a de minimis settlement under CERCLA Section 122(g)(4) because they sent small quantities of barrels to the Site. That agreement requires the settling parties that had not entered one of the earlier settlements to pay their allocated share of the total past and projected future response costs at the Site, plus a premium to cover the risk of potential cost overruns and remedy failure that EPA assumes in entering into a de minimis settlement. The settling parties that are not "prior settlers" will pay \$19.54 for each barrel they sent to the Site that may have contained hazardous substances. The prior settlers that joined the de minimis settlement will pay \$1,000 each to enter the de minimis settlement since they have undertaken cleanup work at the Site the value of which collectively represents approximately \$30.00 per barrel.

EPA has prepared an Administrative Record for each step in the overall Site remedy. These Administrative Records contain the documents which form the basis for EPA's selection of each of the remedies for the Site. These records are open to the public for inspection and are maintained at:

1. Dr. Martin Luther King, Jr. Public Library
Reference Desk
180 W. San Carlos Street, San Jose, CA 95113
(408) 277-4815

2. EPA Superfund Records Center
95 Hawthorne Street
San Francisco, CA 94105
(415) 536-2000
3. San Jose State University
One Washington Square, San Jose, CA 95192
Phone: (408) 924-2730

At this library, information regarding the Site is available at three locations:

- A. Clark Library, Government Publications Desk:
General information regarding location of
Lorentz Superfund Site documents
- B. Walquist Library, Reserve Book Room:
Paper copies of Site documents
- C. Clark Library, Media Center:
Copies of Site documents on microfiche

In addition to the Administrative Records, EPA maintains at these libraries microfiche copies of receipts evidencing your and other persons' transactions with Lorentz. A list of the transaction dates indicating when each individual or company delivered barrels to the Lorentz facility is available. This list serves as an index for finding copies of your receipts in the microfiche file.

SUMMARY OF THE SETTLEMENT OFFER AND INSTRUCTIONS FOR PARTICIPATION IN THE SETTLEMENT

The enclosed Administrative Order on Consent ("AOC") is EPA's and DTSC's settlement offer. If you decide to settle at this time, you will resolve your potential liability to the United States and DTSC at the Site as explained below. The resolution of your liability will be effective when you have signed the AOC and paid the amount allocated to you. EPA and DTSC believe that this de minimis settlement is a fair and equitable means for contributors of a relatively small number of barrels to resolve their potential liability early on in the process, to obtain finality, and to do so with a minimum of transaction costs.

If you have questions concerning the settlement or the procedures described in this summary or the AOC, please call the EPA Superfund de Minimis Hotline at 1-800-890-4219. EPA and DTSC cannot provide you with legal advice or make recommendations; therefore, you may wish to obtain legal counsel. However, we will gladly provide you with information regarding the Site and this settlement.

Please review the AOC carefully. To assist you, we have summarized some of the key sections of the AOC below.

1. Eligibility

EPA is offering a settlement under CERCLA Section 122(g) to persons who qualify as de minimis parties under the standard set forth in the statute. In this case, EPA and DTSC are offering a settlement to parties who have contributed no more than one percent (25,784 barrels) and no less than approximately twelve one-hundredths of a percent (.012%) of the total number of barrels that may have contained hazardous substances sent to the Site as that total is reflected in the July 29, 1994 "Waste-in List." The July 29, 1994 Waste-in List was drawn from EPA's database of Lorentz Barrel and Drum Company customers that sent barrels to the Site that may have contained a hazardous substance, and ranked by volume on July 29, 1994. Based on the records reflected on that list, and subsequent revisions, EPA believes you are such a party and that the substances you contributed to the Site were not more toxic or hazardous in effect in comparison to the other waste sent to the Site. (See AOC paragraph 36).

If you sign this Consent Order, in doing so you are certifying that, to the best of your knowledge, you meet the standard that the Superfund law sets for de minimis settlements: 1) that you did not contribute more than 25,784 barrels to the Site, and 2) that the hazardous substances you contributed were of minimal toxic and hazardous effect in comparison to the other hazardous substances sent to the Site. Please note that under the settlement, the EPA or the State of California may seek more money from you if EPA and DTSC later receive information that shows either that the hazardous substances that you actually contributed are greater than 25,784 barrels or are significantly more toxic or are of significantly greater hazardous effect than other hazardous substances sent to the Site. (See AOC paragraph 43).

2. Amount of Cash Payment

If you join this settlement, you will pay your share of the total estimated cost of the cleanup. This share is based on the number of barrels contributed to the Site by all parties (as determined by EPA based on available records) and the estimated cost to EPA, DTSC, and "prior settlors" for the cleanup (approximately \$25 million), plus a "premium" to address unforeseen contingencies. Parties are required to pay \$19.54 for each barrel attributed to them at the Site to join this settlement unless the party is a "prior settlor" or a party who has previously demonstrated to EPA an inability to pay its allocated share. The parties who have demonstrated to EPA an inability to pay their allocated shares have submitted documentation to support their claims, including tax returns from the preceding three years, bank statements and other financial statements. EPA has reviewed this financial information and determined that these parties have a legitimate inability to pay the full amount in the manner required under this settlement, and EPA has reduced these parties' settlement amounts accordingly. If you believe you may have an inability to pay the amount allocated to you in this settlement, please call the EPA Superfund de Minimis Hotline at 1-800-890-4219.

The amount allocated to you is listed in Column A of Appendix 2 to the AOC. Upon signing the AOC and paying the amount indicated for you, you will resolve your liability to EPA and DTSC for all past and future costs of cleanup of the Site except as described in the AOC at paragraphs 42 through 46.

The first de minimis settlement for this Site included 15 "prior settlors," parties who had entered into one of the earlier settlements and agreed to undertake cleanup work. Under the first de minimis settlement, each prior settlor that joined the settlement paid \$1,000. Under this second de minimis settlement, one remaining de minimis prior settlor will have the option of paying \$1,000.00 to settle. This amount is consideration for the broader covenants and releases provided by EPA and DTSC in this settlement. Prior settlors have undertaken cleanup work at the Site with an estimated value of significantly more than \$19.54 per barrel. (See AOC paragraphs 19 and 20).

3. Covenant Not to Sue

If you join the settlement, in return for the payment specified in Appendix 2, EPA and DTSC will provide you with "final covenants not to sue." (See AOC paragraphs 38 and 39). These covenants are agreements by EPA and DTSC not to sue you or take any further civil or administrative action against you for cleanup costs at the Site, no matter how much the cleanup ultimately may cost. EPA has incurred approximately \$8,957,680 in Past Costs for cleanup at this Site and DTSC has incurred approximately \$4,653,382 in Past Costs. This settlement will give you a release from liability for EPA's past and future costs and DTSC's past and future costs except to the extent rights are reserved to the United States and the State of California at AOC paragraphs 42 through 46. By joining this de minimis settlement, settling parties will be agreeing to the covenants not to sue in paragraphs 40 and 41 of the AOC.